Chiew Foong Shuang v Ketua Pengarah Jabatan Pendaftaran Negara

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCvC-539–04 OF 2022
CHOONG YEOW CHOY JC
5 MAY 2023

Administrative Law — Exercise of administrative powers — Alteration of child's surname — Application to alter child's surname and given name in birth certificate pursuant to ss 13 and 13A of Births and Deaths Registration Act 1957 (Revised 1983) ('the BDRA') — Whether s 13 of BDRA applicable — Whether s 13A(2) of BDRA made it mandatory for non-Muslim illegitimate child to adopt surname of mother — Whether entry of child's surname was clerical error — Whether registration of child's surname was an error of fact or substance — Whether application to alter surname and given name in birth certificate ought to be made before child reached his or her first birthday — Whether mother of child was entitled under the law to change surname and given name of her child — Births and Deaths Registration Act 1957 (Revised 1983) ss 13, 13A(1), (2), 15, 27(2), (3) & 28 — Births and Deaths Registration Rules 2019

Family Law — Children — Change of child's surname — Application to alter child's surname and given name in birth certificate pursuant to ss 13 and 13A of Births and Deaths Registration Act 1957 (Revised 1983) ('the BDRA') — Whether s 13 of BDRA applicable — Whether s 13A(2) of BDRA made it mandatory for non-Muslim illegitimate child to adopt surname of mother — Whether entry of child's surname was clerical error — Whether registration of child's surname was an error of fact or substance — Whether application to alter surname and given name in birth certificate ought to be made before child reached his or her first birthday — Whether mother of child was entitled under the law to change surname and given name of her child — Births and Deaths Registration Act 1957 (Revised 1983) ss 13, 13A(1), (2), 15, 27(2), (3) & 28 — Births and Deaths Registration Rules 2019

The plaintiff gave birth to a child ('the child') after 15 days of her marriage with Moo Chee Ching. The plaintiff had registered the surname and the name of the child on 17 July 2017. The child had adopted the surname of the plaintiff's husband. In the birth certificate of the child, the plaintiff was named as the mother whereas the column for 'Father' had been inserted with the remarks 'Maklumat Tidak Diperolehi'. It ought to be noted that the child was an illegitimate child at the time of the issuance of the birth certificate. The marriage of the plaintiff and Moo Chee Ching ended in divorce on 13 January

2022. Afterwards, the plaintiff had filed the present originating summons against the defendant, the Director General, National Registration Department, seeking an order from this court to alter the child's surname and given name in the birth certificate to either BC or BCZ. In support of the application, the plaintiff relied on ss 13 and 13A of the Births and Deaths Registration Act 1957 (Revised 1983) ('the BDRA') and submitted that since the child was an illegitimate child, the surname 'Chiew' (the surname of the mother) should have been adopted and entered in the register instead of the surname 'Moo' (the surname of the plaintiff's ex-husband). The defendant opposed the plaintiff's application primarily on the ground that the law only permitted the alteration of a surname and/or given name in a birth certificate under two distinct circumstances as prescribed under ss 15 and 27 of the BDRA and neither of these two circumstances applied to the present case. The issue arose was whether the plaintiff was entitled under the law to change the surname and given name of her child. In this regard, the court had examined the following cases: (a) the Federal Court case of *Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 1 MLJ 398 ('Leow Fook Keong'); (b) the High Court case of *Chris Jeremy Lai Zhe Ahn v Ketua Pengarah Jabatan Pendaftaran Negara* [2022] MLJU 3320 ('Chris Jeremy'); and (c) the Federal Court case of *Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener)* [2020] 2 MLJ 277 ('A Child').

Held, dismissing the plaintiff's application with no order as to costs:

(1) Unlike *Chris Jeremy*, the present case concerned an application to alter the name of a child in the birth certificate. Unlike *Chris Jeremy*, the present case required the court to examine and apply the BDRA and the Births and Deaths Registration Rules 2019. While the court agreed with the outcome reached in *Chris Jeremy*, the court was not bound to follow the conclusion in that case. This was attributed to the substantive dissimilarities between the present case and *Chris Jeremy*. In respect of the Federal Court case of *Leow Fook Keong*, the court was of the view that the factual matrix and the main issue in the present case differed markedly from those of the Federal Court in *Leow Fook Keong*. The court did not find that an application to purely change one's surname and given name in the birth certificate as falling within the ambit of matters envisaged by the Federal Court so as to warrant a correction, amendment or update of any record in the birth certificate. Thus, *Leow Fook Keong* did not offer any direct support to the plaintiff's cause (see paras 61 & 63).

(2) In respect of the Federal Court case of *A Child*, Rohana Yusuf PCA in her majority decision clarified that s 13A(2) of the BDRA was an extension of s 13. That relevant subsection allowed additional information to be entered in the Birth Register of an illegitimate child. The minority in *A Child* did not disagree with the above observation. According to David

Wong CJSS (in His Lordship's dissenting judgment), on reading ss 13 and 13A of the BDRA together, a father of an illegitimate child who wished to have his son or daughter carry his surname was entitled to do so. Nallini Pathmanathan and Abang Iskandar FCJJ agreed with David Wong CJSS that the term 'surname' in s 13A ought to be construed as referring to both a patronymic name as well as the dictionary meaning of the word. The majority and the minority in *A Child* had differed on the question of whether s 13A applied to Muslims. The majority ruled in the negative while the minority arrived at the opposite conclusion (see para 67).

(3) Section 13 of the BDRA dealt with the registration of the father's name in the birth certificate. There was no compulsion for the name of the father of an illegitimate child to be entered in the register. However, if there was a joint request by the mother and the person acknowledging himself to be the father of the child, the name of the father may be entered in the register. This section did not directly address the issue before the court in the present case, namely, the alteration of a child's surname and name in the birth certificate. Hence, reliance on this section by the plaintiff was misconceived in law (see para 68).

(4) The court was of the opinion that for a non-Muslim child, regardless of whether the child was legitimate or illegitimate, the insertion of a surname was optional. This was evident from the opening wordings in subsections (1) and (2) of s 13A of the BDRA which provide that 'The surname, if any, to be entered ...'. Subsections (1) and (2) applied to a legitimate and an illegitimate non-Muslim child respectively. In addition, the plaintiff in the present case as the mother of the child, was the informant. She could have provided her own surname, 'Chiew', to be registered as the surname of her child. Instead, she provided the surname of her then husband (now ex-husband), 'Moo', as the surname of her child. Section 13A(2) of the BDRA did not make it mandatory for all non-Muslim illegitimate children to adopt the surname of their mother. The provision was permissive rather than obligatory. The court did not agree with the submission of the plaintiff that the entry of a surname other than that of the mother rendered the entry in the register as 'void and ought to be expunged' (see paras 70–72).

(5) The entry of the child's surname in the register as 'Moo' was not a clerical error that ought to be corrected or altered under s 27(2) of the BDRA. Further, the registration of the surname 'Moo' in this case was not an error of fact or substance within the meaning of s 27(3) of the BDRA. Hence, the question of the defendant having to adhere to s 28 of the BDRA did not arise in this case (see para 73).

(6) The defendant did concede that surnames and given names in the register and birth certificates may be altered. Section 15 of the BDRA clearly

provided for the registration of 'name of child or of alteration of name'. However, any such alteration was to be made before a child reached his or her first birthday. As the application for alteration of name in this case was made after the child had reached his first birthday, s 15 of the BDRA was of no assistance to the plaintiff (see paras 74–75).

[Bahasa Malaysia summary

Plaintif telah melahirkan seorang anak ('anak tersebut') selepas 15 hari perkahwinannya dengan Moo Chee Ching. Plaintif telah mendaftarkan nama keluarga dan nama anak tersebut pada 17 Julai 2017. Anak tersebut telah menggunakan nama keluarga suami plaintif. Dalam sijil kelahiran anak tersebut, plaintif dinamakan sebagai ibu manakala ruangan untuk 'Bapa' tertera butiran 'Maklumat Tidak Diperolehi'. Perlu diingatkan bahawa anak tersebut adalah anak tidak sah taraf pada masa pengeluaran sijil kelahiran. Perkahwinan plaintif dan Moo Chee Ching berakhir dengan perceraian pada 13 Januari 2022. Selepas itu, plaintif telah memfailkan saman pemula terhadap defendan, Ketua Pengarah, Jabatan Pendaftaran Negara, bagi memohon perintah daripada mahkamah ini untuk menukar nama keluarga anak tersebut dan nama yang diberi dalam sijil kelahiran kepada BC atau BCZ. Bagi menyokong permohonan tersebut, plaintif bergantung pada ss 13 dan 13A Akta Pendaftaran Kelahiran dan Kematian 1957 (Disemak 1983) ('APKK') dan berhujah bahawa memandangkan anak tersebut adalah anak tidak sah taraf, nama keluarga 'Chiew' (nama keluarga ibu) sepatutnya diguna pakai dan dimasukkan dalam daftar kelahiran dan bukannya nama keluarga 'Moo' (nama keluarga bekas suami plaintif). Defendan menentang permohonan plaintif terutamanya atas alasan bahawa undang-undang hanya membenarkan pindaan nama keluarga dan/atau nama yang diberikan dalam sijil kelahiran di bawah dua keadaan sahaja seperti yang ditetapkan di bawah ss 15 dan 27 APKK dan kedua-dua keadaan ini tidak terpakai kepada kes semasa. Isu yang timbul ialah sama ada plaintif berhak di bawah undang-undang untuk menukar nama keluarga anaknya dan nama yang diberikan kepada anaknya. Sehubungan itu, mahkamah telah meneliti kes-kes berikut: (a) kes *Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 1 MLJ 398 ('Leow Fook Keong'); (b) kes Mahkamah Tinggi *Chris Jeremy Lai Zhe Ahn v Ketua Pengarah Jabatan Pendaftaran Negara* [2022] MLJU 3320 ('Chris Jeremy'); dan (c) *Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener)* [2020] 2 MLJ 277 ('A Child').

Diputuskan, menolak permohonan plaintif tanpa perintah berkenaan kos:

(1) Tidak seperti kes *Chris Jeremy*, kes semasa melibatkan permohonan untuk menukar nama anak dalam sijil kelahiran. Tidak seperti kes *Chris Jeremy*, kes semasa memerlukan mahkamah memeriksa dan menggunakan APKK dan Kaedah-Kaedah Pendaftaran Kelahiran dan

Kematian 2019. Walaupun mahkamah bersetuju dengan keputusan yang dibuat dalam kes *Chris Jeremy*, mahkamah tidak terikat untuk mengikuti kesimpulan dalam kes tersebut. Ini disebabkan oleh perbezaan substantif antara kes semasa dan kes *Chris Jeremy*. Berkenaan dengan kes Mahkamah Persekutuan *Leow Fook Keong*, mahkamah berpendapat bahawa matriks fakta dan isu utama dalam kes semasa berbeza dengan ketara daripada matriks fakta dan isu dalam kes Mahkamah Persekutuan *Leow Fook Keong*. Mahkamah tidak mendapati bahawa permohonan untuk menukar nama keluarga dan nama yang diberikan dalam sijil kelahiran semata-mata adalah termasuk dalam bidang perkara yang dicadangkan oleh Mahkamah Persekutuan dalam kes tersebut untuk menjamin pembetulan, pindaan atau kemas kini mana-mana rekod dalam sijil kelahiran. Oleh itu, *Leow Fook Keong* tidak menawarkan apa-apa sokongan langsung kepada kausa plaintif (lihat perenggan 61–63).

(2) Berkenaan dengan kes Mahkamah Persekutuan *A Child*, Rohana Yusuf HMR dalam keputusan majoritinya menjelaskan bahawa s 13A(2) APKK adalah lanjutan daripada s 13. Subseksyen yang relevan tersebut membenarkan maklumat tambahan dimasukkan dalam Daftar Kelahiran anak tidak sah taraf. Minoriti dalam kes *A Child* bersetuju dengan dapatan di atas. Menurut David Wong HBSS (dalam penghakiman menentangnya), apabila membaca ss 13 dan 13A APKK bersama-sama, seorang bapa kepada anak tidak sah taraf yang ingin anak lelaki atau perempuannya membawa nama keluarga berhak berbuat demikian. Nallini Pathmanathan dan Abang Iskandar HHMP bersetuju dengan David Wong HBSS bahawa istilah 'nama keluarga' dalam s 13A sepatutnya ditafsirkan sebagai merujuk kepada kedua-dua nama patronimik serta makna kamus perkataan tersebut. Majoriti dan minoriti dalam kes *A Child* telah berbeza pendapat mengenai persoalan sama ada s 13A terpakai kepada orang Islam. Majoriti membuat keputusan negatif manakala minoriti mencapai kesimpulan yang bertentangan (lihat perenggan 67).

(3) Seksyen 13 APKK memperkatakan berkenaan pendaftaran nama bapa dalam sijil kelahiran. Tiada paksaan untuk nama bapa kepada anak tidak sah taraf dimasukkan ke dalam daftar kelahiran. Walau bagaimanapun, jika terdapat permintaan bersama oleh ibu dan orang yang mengaku dirinya sebagai bapa kepada kanak-kanak tersebut, nama bapa boleh dimasukkan dalam daftar. Bahagian ini tidak secara langsung menangani isu di hadapan mahkamah dalam kes ini, iaitu, perubahan nama keluarga dan nama anak tersebut dalam sijil kelahiran. Oleh itu, pergantungan pada seksyen ini oleh plaintif adalah salah anggap dalam undang-undang (lihat perenggan 68).

(4) Mahkamah berpendapat bahawa bagi kanak-kanak bukan Islam, tidak

kira sama ada kanak-kanak tersebut sah atau tidak sah taraf, kemasukan nama keluarga adalah pilihan. Ini terbukti daripada perkataan pembukaan dalam sub-s (1) dan (2) s 13A APKK yang memperuntukkan bahawa 'The surname, if any, to be entered ...'. Subseksyen (1) dan (2) masing-masing terpakai bagi anak yang sah taraf dan anak tidak sah taraf bukan Islam. Di samping itu, plaintif dalam kes semasa sebagai ibu kepada anak tersebut, adalah pemaklum. Dia boleh memberikan nama keluarganya sendiri iaitu 'Chiew', untuk didaftarkan sebagai nama keluarga anaknya. Sebaliknya, dia memberikan nama keluarga suaminya (kini bekas suaminya), 'Moo', sebagai nama keluarga anaknya. Seksyen 13A(2) APKK tidak mewajibkan semua anak tidak sah taraf yang bukan Islam menggunakan nama keluarga ibu mereka. Peruntukan tersebut adalah peruntukan yang mengizinkan dan bukannya wajib. Mahkamah tidak bersetuju dengan penghujahan plaintif bahawa kemasukan nama keluarga selain nama ibu menyebabkan kemasukan dalam daftar sebagai 'void and ought to be expunged' (lihat perenggan 70–72).

(5) Kemasukan nama keluarga anak tersebut dalam daftar sebagai 'Moo' bukanlah kesilapan perkeranian yang sepatutnya diperbetulkan atau diubah di bawah s 27(2) APKK. Selanjutnya, pendaftaran nama keluarga 'Moo' dalam kes ini bukanlah kesilapan fakta atau 'substance' dalam pengertian s 27(3) APKK. Oleh itu, persoalan defendan perlu mematuhi s 28 APKK tidak timbul dalam kes ini (lihat perenggan 73).

(6) Defendan mengakui bahawa nama keluarga dan nama yang diberikan dalam daftar dan sijil kelahiran boleh diubah. Seksyen 15 APKK dengan jelas memperuntukkan pendaftaran 'nama anak atau perubahan nama'. Walau bagaimanapun, apa-apa perubahan tersebut perlu dibuat sebelum kanak-kanak tersebut mencapai hari lahirnya yang pertama. Oleh kerana permohonan untuk menukar nama dalam kes ini dibuat selepas anak tersebut mencapai hari lahirnya yang pertama, s 15 APKK tidak membantu plaintif (lihat perenggan 74–75).]

Cases referred to

Chris Jeremy Lai Zhe Ahn v Ketua Pengarah Jabatan Pendaftaran Negara [2022] MLJU 3320; [2023] 3 AMR 1, HC (distd)

Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener) [2020] 2 MLJ 277; [2020] 2 AMR 725; [2020] 4 CLJ 731, FC (folld)

Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor [2022] 1 MLJ 398; [2022] 1 AMR 23; [2022] 1 CLJ 23, FC (distd)

Legislation referred to

Births and Deaths Registration Act 1953 [UK] s 13
Births and Deaths Registration Act 1957 ss 7, 7(2), (2)(b), 13, 13A, (1), (2), 15, 16, 27, 27(2), (3), 28, 34
Births and Deaths Registration Rules 2019
National Registration Act 1959
National Registration Regulations 1990 reg 14

Pramjit Kaur (Mann & Assoc) for the plaintiff.
Nur Aifaa bt Che Abdullah (Attorney General's Chambers) for the defendant.

Choong Yeow Choy JC:

INTRODUCTION

[1] 'What's in a name? That which we call a rose by any other name would smell just as sweet'. This may indeed be true when references are made to things or objects. Nevertheless, in the context of people or persons, do names merely serve the purpose of distinguishing a person from another? After all, to an individual, the sweetest sound a person hears is the person's name.

[2] A legal issue relating to the significance of a name, or more accurately, the right to pick and subsequently change one's surname and given name was raised before this court.

THE PARTIES AND THE NATURE OF THE APPLICATIONS

[3] The plaintiff is one Chiew Foong Shuang.

[4] The defendant is the Ketua Pengarah, Jabatan Pendaftaran Negara (Director General, National Registration Department).

[5] The plaintiff had commenced an originating summons action against the defendant to alter her child's surname and given name.

[6] The name MHY was registered in the child's birth certificate. MHY was born on 21 June, 2017. He is thus just short of six years old.

[7] The plaintiff had sought an order from this court vide this originating summons to alter MHY's surname and given name in the birth certificate to either BC or BCZ.

[8] It should be noted that the primary objective of the present action was an application to alter the child's surname. The alteration of the child's given name

A was a consequential application. The reasons for these applications will become clear in the ensuing paragraphs.

[9] The defendant opposed the above applications primarily on the ground that the law only permits the alteration of a surname and/or given name in a
B birth certificate under two distinct circumstances and neither of these two circumstances applied to the present case.

THE PERTINENT FACTS

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[10] It is apt that the brief, but nevertheless pertinent facts are set out. This is to enable a better understanding of the circumstances leading to the present applications.

D **[11]** The plaintiff was married to one Moo Chee Ching on 6 June, 2017. The marriage ended in divorce on 13 January, 2022.

[12] The plaintiff gave birth to the child some 15 days after her marriage to Moo Chee Ching.

E

[13] The plaintiff, in acting as an informant pursuant to s 7(2)(b) of the Births and Deaths Registration Act 1957, had registered the surname and name of the child on 17 July 2017.

F

[14] The child's surname and given name, as noted earlier, was registered in the birth certificate as MHY. It is apparent that the child had adopted the surname of the plaintiff's ex-husband at the time of registration. The ex-husband is not the biological father of the child.

G

[15] It is also apposite to point out that the child was an illegitimate child at the time of the issuance of the birth certificate.

[16] In the birth certificate, the plaintiff's name, together with her other
H particulars, were inserted under the column/heading 'Ibu/Mother'. However, under the column/heading 'Bapa/Father', the following remarks, namely, 'Maklumat Tidak Diperolehi' has been inserted into each of the information pertaining to the 'Bapa/Father' of the child.

I ISSUE BEFORE THE COURT

[17] The overriding issue for consideration was whether the plaintiff was entitled under the law to change the surname and given name of her child.

[18] The above issue brought into focus the role and duty of the Registrar-General of Births and Deaths ('the Registrar-General'). Was the Registrar-General in the instant case under a legal obligation to approve the applications by the plaintiff to alter her child's surname and given name?

THE APPLICABLE LAW

[19] The primary piece of legislation that applied to the present case is the Births and Deaths Registration Act 1957 (Revised 1983), Act 299 ('the BDRA').

[20] References were also made to the National Registration Act 1959, the National Registration Regulations 1990 (PU(A) 472/1990) and the Births and Deaths Registration Rules 2019 (PU(A) 54/2019).

THE CASE FOR THE PLAINTIFF

[21] In support of her primary application to have the surname of the child changed, the plaintiff relied on ss 13 and 13A of the BDRA.

[22] Section 13 of the BDRA states as follows:

> 13 Provisions as to father of illegitimate child
>
> Notwithstanding anything in the foregoing provisions of this Act, in the case of an illegitimate child, no person shall as father of the child be required to give information concerning the birth of the child, and the Registrar shall not enter in the register the name of any person as father of the child except at the joint request of the mother and the person acknowledging himself to be the father of the child, and that person shall in that case sign the register together with the mother.

Whereas s 13A of the BDRA provides as follows:

> 13A Surname of child
>
> (1) The surname, if any, to be entered in respect of a legitimate child shall ordinarily be the surname, if any, of the father.
>
> (2) The surname, if any, to be entered in respect of an illegitimate child may where the mother is the informant and volunteers the information, be the surname of the mother; provided that where the person acknowledging himself to be the father of the child in accordance with the provisions of section 13 request so, the surname may be the surname of that person.

[23] In view of the fact that the plaintiff's child in the instant case was an illegitimate child, counsel for the plaintiff, Ms Pramjit Kaur, relied on s 13 of the BDRA and advanced the argument that the Registrar should not have

allowed the entry in the register the plaintiff's ex-husband's surname, 'Moo', as the child's surname. Counsel for the plaintiff conceded that the name of any person as father of the child could have been inserted if there were a joint request made by the mother and the person acknowledging himself to be the father of the child. Counsel alluded to the fact that there was no such joint request in the present case.

[24] The plaintiff further relied on s 13A(2) of the BDRA and contended that since the child in the present case was an illegitimate child, the surname 'Chiew' (the surname of the mother) should have been adopted and entered in the register instead of the surname 'Moo' (the surname of the plaintiff's ex-husband). Section 13A(2) nevertheless allows the surname of the father of the child to be adopted but this is subject to the proviso that the person acknowledging himself to be the father of the child in accordance with the provisions of s 13 had made a request. No such request was made in the present case.

[25] The plaintiff argued that when the surname 'Moo' instead of 'Chiew' was inserted in the register as the surname of the child, there was no due compliance with ss 13 and 13A of the BDRA, rendering the entry in the register as 'void and ought to be expunged and altered to the surname of the plaintiff'.

[26] The plaintiff adopted the position that it was the defendant, and not the plaintiff, that owed the duty to ensure due compliance with the BDRA.

[27] Reliance was also made to s 28 of the BDRA and the decision of the Federal Court in *Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 1 MLJ 398; [2022] 1 AMR 23; [2022] 1 CLJ 23 ('Leow Fook Keong').

[28] Section 28 of the BDRA reads as follows:

> 28 Duty of Superintendent Registrar and Registrar to procure registration
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> (1) Notwithstanding any omission to report or to furnish information as to any birth, still-birth or death within the time required by the preceding provisions of this Act, it shall be the duty of the Superintendent-Registrar and the Registrar to procure by all means in their power the best and most accurate information respecting any birth, still-birth or death which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed.
>
> (2) It shall be the duty of every police officer, penghulu and headman to obtain information of every birth, still-birth and death within his respective area and also information respecting the lawful father and the

mother of every child born in his area and respecting the occupier of any house in his area in which any birth, still-birth or death may have taken place and to give notice thereof to the Registrar.

(3) Any police officer, penghulu or headman who has in his possession any such information and wilfully neglects or omits to disclose the same to the Registrar shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty ringgit.

[29] The decision of the Federal Court in *Leow Fook Keong* is analysed and discussed below.

[30] This court further took cognizance of the following facts and reasonings underscored by the plaintiff, namely, that: (i) the plaintiff and her ex-husband, Moo Chee Ching are now legally divorced; (ii) her ex-husband is not the biological father of the child; and (iii) the child will suffer from the stigma in the years to come from having to maintain the surname of a 'non-biological divorced father'.

[31] If this court were to allow the application by the plaintiff to have the surname of the child altered, the consequent prayer was for the child to adopt a new given name to go with the new surname. The reason as explained by the plaintiff for the necessity to alter the given name was based on good *feng shui* (Chinese geomancy) practice.

THE CASE FOR THE DEFENDANT

[32] The defendant had advanced several arguments to oppose the plaintiff's applications. First, the defendant adopted the position that the plaintiff, as the mother of the child, was a qualified informant within the meaning of s 7(2) of the BDRA to provide information concerning the birth of a child. Section 7 of the BDRA provides as follows:

7 Particulars of births to be registered

(1) Subject to the provisions of this Part, the birth of every child born in Malaysia shall be registered by the Registrar in any registration area by entering in a register such particulars concerning the birth as may be prescribed; and different registers shall be used and different particulars may be prescribed for live-births and still-births respectively:

Provided that, where a living child is found exposed and no information as to the place of birth is available, the birth shall be registered by the Registrar for the registration area in which the child is found.

(2) The following persons shall be qualified to give information concerning a birth, that is to say:

(a) the father of the child;

A (b) the mother of the child;

(c) the occupier of the house in which the child was to the knowledge of that occupier born;

(d) any person present at the birth; and

B (e) any person having charge of the child.

(3) (Deleted by Act A1524: s 6)

C **[33]** The defendant argued that since the information provided by the plaintiff who was a qualified informant had been inserted in the register and birth certificate, the Registrar-General had complied with the requirements of the law as prescribed in the BDRA.

D **[34]** More importantly, the defendant advanced the proposition that the law only allows any alteration of a surname and given name under two circumstances. The defendant referred to the two circumstances are outlined in ss 15 and 27 of the BDRA. For ease of reference, ss 15 and 27 of the BDRA provide as follows:

E 15 Registration of name of child or of alteration of name

(1) Where before the expiration of one year from the date of the birth of any child the name by which it is registered is altered or where a child has been registered without a name, a name is given to such child before twelve months have elapsed since the date of birth, the Superintendent Registrar having the custody of the F register in which the birth was registered upon delivery to him of a certificate in the prescribed form specifying the name as altered or as given signed by the father or the mother or the guardian or the person for the time being having custody of the child and upon payment to him by the person procuring the name mentioned in the certificate to be entered of such fee as may be prescribed, shall enter forthwith in the G register without any erasure of the original entry the name mentioned in the certificate as having been given to the child; and such Superintendent Registrar shall after stating upon the certificate the fact that the entry has been made, send forthwith the certificate to the Registrar General who shall then cause a corresponding entry to be made in his register.

H (2) Where a child has been registered without a name, a name may be registered —

(a) in the case of a child who has attained the age of one year but not twenty-one years, by delivery to the Registrar General of a certificate in the prescribed form specifying the name as given signed by the father or the mother or the guardian or the person for the time being having custody of I the child; or

(b) in the case of a person who has attained the age of twenty-one years, by delivery to the Registrar General of a certificate in the prescribed form giving the name by which he desires to be registered, and by paying to the Registrar General such fee as may be prescribed.

(3) The Registrar General shall on receipt of the certificate direct the Superintendent Registrar having the custody of the register in which the birth was registered to enter forthwith in the register without any erasure of the original entry the name mentioned in the certificate as having been given and such Superintendent Registrar shall act accordingly and the Registrar General shall at the same time cause a corresponding entry to be made in his register:

Provided that before giving a direction under this subsection, the Registrar General shall require the person delivering the certificate to produce evidence which appears to the Registrar General satisfactory that such person is a person who was registered without a name.

(4) Where any person procures the alteration of a name or the entry of a name in the register pursuant to the provisions of subsection (1) or (2) and the name as altered or as given is shown in the appropriate certificate delivered as in the said subsections mentioned in Chinese characters as well as in Roman characters, the Registrar General may permit such person to insert in the register in such manner as may be prescribed the name as altered or as given in Chinese characters.

(5) The provisions of this section shall not apply with respect to a still-born child or to a child which has died prior to the delivery of any certificate in this section mentioned.

27 Correction of errors and alteration in register:

(1) No alteration in any register shall be made except as authorized by this Act.

(2) Any clerical error which may from time to time be discovered in any register may be corrected by the Superintendent Registrar, in such manner as the Registrar-General shall direct.

(3) Any error of fact or substance in any register may be corrected by the Registrar General upon payment of the prescribed fee and upon production by the person requiring such error to be corrected of a statutory declaration setting forth the nature of the error and the true facts of the case, and made by two persons required by this Act to give information concerning the birth, still-birth or death with reference to which the error has been made, or in default of such persons then by two credible persons having knowledge to the satisfaction of the Registrar General of the truth of the case; and the Registrar General may if he is satisfied of the facts stated in the statutory declaration cause such entry to be certified and the day and the month and the year when such correction is made to be added thereto.

(3A) Where the Registrar-General, the Superintendent-Registrar or the Registrar is satisfied that from an inquiry held under section 37B an error of fact or substance in any register exists, the error of fact or substance may be corrected by the Registrar-General.

(4) Where an error of fact or substance occurs in the information forwarded by a Coroner or Magistrate under section 24 the Coroner or Magistrate, if satisfied that such error exists, may certify under his hand to the appropriate Superintendent Registrar the nature of the error and the true facts of the case as ascertained by him, and the error may thereupon be corrected by such Superintendent-Registrar.

(5) (Deleted by Act A1524: s 21)

(6) (Deleted by Act A1524: s 21)

[35] The defendant maintained that the plaintiff failed to fulfil the conditions imposed in these provisions. The defendant argued that any alteration of a name pursuant to s 15 can only be made before a child reaches his or her first birthday and this is mandated in s 15 of the BDRA. As for the position under s 27 of the BDRA, alteration of a name is only permitted to correct any clerical error or any error of fact or substance in any register. The defendant submitted that in the present case, there was no such clerical error nor any error of fact or substance in the register.

THE AUTHORITIES

[36] In addition to the provisions in the BDRA as referred to above, the plaintiff and defendant had cited and relied on a number of reported decisions. The cases cited are *Leow Fook Keong, Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener)* [2020] 2 MLJ 277; [2020] 2 AMR 725; [2020] 4 CLJ 731 ('A Child') and *Chris Jeremy Lai Zhe Ahn v Ketua Pengarah Jabatan Pendaftaran Negara* [2022] MLJU 3320; [2023] 3 AMR 1 ('Chris Jeremy').

[37] While *Leow Fook Keong* and *A Child* are both decisions of the Federal Court and thus binding on this court, neither of these decisions addresses the specific issue raised in the present appeal. Having said that, I hasten to add that these two decisions of our Federal Court are instructive and significant, for reasons that are obvious. These decisions of our apex court provide the much-needed clarity on the scheme and scope of the BDRA in general and the object and relationship between ss 13 and 13A of the BDRA.

[38] *Chris Jeremy*, a decision of the High Court, involved a similar application for the alteration of the name of a child. However, as explained below, the facts and nature of the case are distinguishable from those in the present case.

THE LEGAL POSITION

[39] Our quest in seeking clarity and guidance in understanding the scheme of the BDRA and the role of the Registrar-General of Births and Deaths in general, and the interpretation and application of ss 13 and 13A of the BDRA in particular, has been enriched by the insightful, comprehensive and well-articulated judgments rendered by the judges of our apex court in *Leow Fook Keong* and *A Child*.

[40] It is not just fitting but indispensable and obligatory that we draw from these judgments to appreciate and comprehend the legal position concerning the issue at hand.

[41] In *Leow Fook Keong*, Mary Lim FCJ emphasised the importance of the registration of every birth and death. In this regard, Her Ladyship underscored the point that the overriding intent of the BDRA is the registration of births and deaths. According to Her Ladyship, the registers within the meaning of the BDRA 'are meant to form the source or act as both the depository and repository of raw data of the nation's population' (see para [35]). Similar observations were made by David Wong CJSS, Nallini Pathmanathan FCJ and Abang Iskandar Abang Hashim FCJ (as His Lordship then was) in *A Child* (see paras [171] and [244] respectively).

[42] The principal issue in *Leow Fook Keong* was whether the National Registration Department was under a statutory duty to record the particulars of the biological father of an illegitimate child and to correct such records when evidence and undisputed facts came to light. Reading ss 7 and 34 of the BDRA together, and further considering ss 27 and 28 of the same Act, the Federal Court in *Leow Fook Keong* held that the true status of the child ought to be corrected and updated to reflect accurate information as regards the biological father. According to the Federal Court, such is required by the scheme of the BDRA.

[43] On the other hand, the issue in *A Child* was whether the Director General of the National Registration Department ('DGNRD') possessed the authority under the BDRA to ascribe 'bin Abdullah' instead of the name of the biological father to the name of an illegitimate Muslim child on his own volition in registering the birth of that child.

[44] At the time of making the application to register the child's birth, the second and third respondents, as the father and mother of the child respectively, had jointly applied for the father's name, MEMK, to be entered in the Birth Register as the father of the child. In the birth certificate issued by the DGNRD, the DGNRD entered the name MEMK in the column on particulars of the father, in due compliance with s 13 of the BDRA. However, the child's full name was given as 'bin Abdullah', instead of 'bin MEMK'.

[45] The second respondent applied under s 27(3) of the BDRA to correct the child's name from 'bin Abdullah' to that of his name, that is, 'bin MEMK'. This application was rejected by the DGNRD on the ground that an illegitimate Muslim child cannot be ascribed to the name of his biological father. The DGNRD relied on a *fatwa* issued on the subject that a Muslim illegitimate child was to be named 'bin Abdullah'.

[46] By a 4:3 majority decision, the Federal Court held that an illegitimate Muslim child could not be ascribed to the name of his father in Islam, and this is made manifest when almost every legislation on the subject in the Enactment of each States of Malaysia contains, what the majority of the court regard as, a 'clear injunction' (see paras [57]–[59]).

[47] On the issue of surname, which was relevant to the case before me, David Wong CJSS, in his dissenting judgment held that surname under s 13A of the BDRA was intended to include patronymic surnames. His Lordship also held that s 13A was intended to apply to all illegitimate children, Muslims or otherwise. Nallini Pathmanathan FCJ and Abang Iskandar Abang Hashim FCJ in their dissenting judgments also ruled that the term 'surname' in s 13A ought to be construed as referring to both a patronymic name as well as the dictionary meaning of the word (see paras [250] and [251]). In view of the above findings, the minority decided in favour of the respondents that the name of the child be altered from 'Child bin Abdullah' to 'Child bin MEMK'.

[48] Rohana Yusuf PCA, in delivering the judgment of the majority, explicated the position that s 13A(2) of the BDRA is an extension of s 13 and that provision allows additional information to be entered in the Birth Register of an illegitimate child (see paras [25] and [26]). Her Ladyship added that s 13A is not a mandatory provision to be applied to all cases. The majority in the Federal Court clarified that Malays do not have any surname. The majority also opined that s 13A of the BDRA is not applicable to the Malays in Malaysia. According to Rohana Yusuf PCA, since MEMK was a personal name, to name a child as 'bin MEMK' 'on the basis that it was a surname of the father pursuant to s 13A of the BDRA is without basis legally or factually' (see paras [43] and [44]).

[49] While the Federal Court in *A Child* was divided on the question of whether s 13A of the BDRA applies to only non-Muslims, the court was unanimous in holding that s 13A applies to both legitimate and illegitimate children.

[50] On the point of existing authorities, reference may also be made to *Chris Jeremy*, which, as noted above, also involved an application for the alteration of the surname of a child.

[51] In that case, Amarjeet Singh J had allowed an application by the plaintiff to have his surname in his identity card changed from 'Lai' to 'Ser'. The motivation behind the application was explained by His Lordship as follows:

> [4] The divorce affected the plaintiff's childhood as he was brought up without love,

affection and care of his father. The relationship between father and son has deteriorated to the extent that there is nothing left. On the other hand, the plaintiff has received love and affection from his stepfather who treats him like his own son. The plaintiff has renounced his father's name and rejected any inheritance from his father and has taken his stepfather's name. 'Ser' as his father's name, his own reasons as it makes him feel inclusive as a family.

[52] A point that should be underscored is the fact that the application was made pursuant to reg 14 of the National Registration Regulations 1990.

[53] The DGNRD had relied on the BDRA and advanced the argument that according to s 13A of the said Act, the name registered should be that of the biological father. It was further contended by the defendant that since the requirements in the BDRA had not been fulfilled, the application could not be approved.

[54] The High Court had little difficulty in rejecting the arguments put forward by the defendant. The High Court noted that the plaintiff in that case was not applying to change his particulars of his birth certificate. Hence, 'section 13A of the Births and Deaths Registration Act 1957 or any other section therein is not relevant' (see para [7]). The High Court stressed that the BDRA concerns the registration of births and deaths and not the identity card of a citizen and the latter is governed by the National Registration Act 1959.

THE DECISION OF THE COURT

[55] Save for some exceptional circumstances, the law allows every individual to select one's own name. This can be inferred from s 16 of the BDRA.

16 Registration of objectionable or undesirable names

Where it appears to the Registrar that the name of a child sought to be entered in a register of births is objectionable or undesirable he shall refer the matter to the Registrar General and the Registrar General may cause such name to be registered or not to be registered as he shall deem fit.

[56] In this regard, each one of us would have encountered names which tickle our funny bone or those which we find as unusual. It is best that these names that we may be aware of are not mentioned in this judgment lest it be taken as a jibe at the expense of these individuals.

[57] In the present case, the plaintiff had chosen the name MHY for her child. Far from being objectionable or undesirable, this chosen name was registered in the register of births and the birth certificate issued to the child.

A **[58]** The matter turned contentious when the plaintiff made a request to have the surname and given name of her child altered. The request was rejected by the defendant and hence the present application before this court.

B **[59]** Does the law permit the alteration of an individual's name? The position does not appear to be as straightforward as one may have presumed.

C **[60]** Since the present application by the plaintiff involved the alteration of a child's name, this court was urged to follow the decision of the High Court in *Chris Jeremy* which had allowed a similar application for a change in name. However, it must be remembered that the *Chris Jeremy* case was concerned with an application to change the name of a child in his identity card. In this regard, the High Court rightly noted that the applicable law was the National Registration Act 1959 and its attendant National Registration Regulations 1990. As the requirements set out in reg 14 of the National Registration Regulations 1990 were complied with, the DGNRD had a duty to allow the application by the child.

D

E **[61]** Unlike *Chris Jeremy*, the present case concerned an application to alter the name of a child in the birth certificate. Unlike *Chris Jeremy*, the present case required me to examine and apply the BDRA and the Births and Deaths Registration Rules 2019. While I am in agreement with the outcome reached in *Chris Jeremy*, I am not bound to follow the conclusion in that case. This is attributed to the substantive dissimilarities between this case and *Chris Jeremy*.

F

G **[62]** What about the decision of the Federal Court in *Leow Fook Keong*, which had considered the provisions in the BDRA and which the plaintiff had cited in support of her application in this present case? In light of the clearly reasoned and ably articulated judgment of the Federal Court in *Leow Fook Keong*, I am bound to permit an application to correct, amend or update any record in the birth certificate, if for example, any evidence and/or undisputed facts are brought to the attention of the court.

H **[63]** The factual matrix and the main issue in the present case before me differ markedly from those of the Federal Court in *Leow Fook Keong*. I do not find that an application to purely change one's surname and given name in the birth certificate as falling within the ambit of matters envisaged by the Federal Court so as to warrant a correction, amendment or update of any record in the birth certificate. Thus, *Leow Fook Keong* does not offer any direct support to the

I plaintiff's cause.

[64] This is not to say that a change in the name of a person cannot be made in one's birth certificate. The defendant conceded that the BDRA permits an alteration to be made to names in the birth certificate. However, the defendant

strenuously argued that any such alteration must be permitted by the BDRA. In this regard, the provisions in ss 13, 13A, 15, 27 and 28 are crucial for deliberation.

[65] Before the above provisions are examined in detail, it is apt that an analysis and consideration of the other binding and momentous decision of the Federal Court in *A Child* is undertaken. This is crucial as the Federal Court had scrutinised and explicated the constituent elements behind the two main provisions relied on by both parties in this case, namely, ss 13 and 13A of the BDRA.

[66] As the child in the instant case is an illegitimate child, the plaintiff relied on ss 13 and 13A of the BDRA. It was argued by the plaintiff that these provisions, when read together, support her contention that the mother's surname 'Chiew' should be the surname in the birth certificate.

[67] In her majority decision, Rohana Yusuf PCA clarified that s 13A(2) of the BDRA is an extension of s 13. That relevant subsection allows additional information to be entered in the Birth Register of an illegitimate child. The minority in *A Child* did not disagree with the above observation. According to David Wong CJSS (in His Lordship's dissenting judgment), on reading ss 13 and 13A of the BDRA together, a father of an illegitimate child who wishes to have his son or daughter carry his surname is entitled to do so (see para [131]). Nallini Pathmanathan and Abang Iskandar FCJJ agreed with David Wong CJSS that the term 'surname' in s 13A ought to be construed as referring to both a patronymic name as well as the dictionary meaning of the word (see paras [141] and [251]). The majority and the minority in *A Child* had differed on the question of whether s 13A applied to Muslims. The majority ruled in the negative while the minority arrived at the opposite conclusion.

[68] Section 13 of the BDRA deals with the registration of the father's name in the birth certificate. There is no compulsion for the name of the father of an illegitimate child to be entered in the register. However, if there is a joint request by the mother and the person acknowledging himself to be the father of the child, the name of the father may be entered in the register. This section does not directly address the issue before this court, namely, the alteration of a child's surname and name in the birth certificate. Hence, reliance on this section by the plaintiff is misconceived in law.

[69] As the child in our present case is a non-Muslim illegitimate child and the issue is one that pertains to the surname of the child, s 13A(2) of the BDRA is relevant. The plaintiff's argument was anchored on this provision (see paras [23] and [24] above).

[70] It is my considered view that, for a non-Muslim child, regardless of whether the child is legitimate or illegitimate, the insertion of a surname is optional. This is evident from the opening wordings in sub-ss (1) and (2) of s 13A of the BDRA which provide that 'The surname, *if any*, to be entered ...'. Subsections (1) and (2) apply to a legitimate and an illegitimate non-Muslim child respectively. In addition, in the case of a non-Muslim illegitimate child and 'the mother is the informant and volunteers the information', s 13A(2) of the BDRA provides that the surname of the illegitimate child *may* be the surname of the mother. The surname of the father may still be adopted if a request is made by the father of the child in accordance with the provisions of s 13 of the same Act. Section 13A(2) of the BDRA does not mandate that the surname of the mother must be adopted as a matter of course.

[71] In the present case, the plaintiff, as the mother of the child, was the informant. She could have provided her own surname, 'Chiew', to be registered as the surname of her child. Instead, she provided the surname of her then husband (now ex-husband), 'Moo', as the surname of her child. No doubt, the plaintiff had affirmed in her affidavit that she had no knowledge of the law and that she didn't know that her surname could have been registered. However, the registration of the surname 'Moo' is not against the provision in s 13A(2) of the BDRA.

[72] Section 13A(2) does not make it mandatory for all non-Muslim illegitimate children to adopt the surname of their mother. The provision is permissive rather than obligatory. The plaintiff, as the informant, could have registered the surname, 'Chiew', 'Moo' or 'Boo'. I do not agree with the submission of the plaintiff that the entry of a surname other than that of the mother rendered the entry in the register as 'void and ought to be expunged'.

[73] The entry of the child's surname in the register as 'Moo' was not a clerical error that ought to be corrected or altered under s 27(2) of the BDRA. Nor do I find the registration of the surname 'Moo' in this case to be an error or fact or substance within the meaning of s 27(3) of the BDRA. Hence, the question of the defendant having to adhere to s 28 of the BDRA, in my view, did not arise in this case.

[74] The defendant did concede that surnames and given names in the register and birth certificates may be altered. Section 15 of the BDRA clearly provides for the registration of 'name of child or of *alteration of name*'. However, any such alteration is to be made before a child reaches his or her first birthday.

[75] Section 15 of the BDRA is based on s 13 of the Births and Deaths Registration Act 1953 (Chapter 20) UK. Both the original and amended

provisions in s 13 of the UK Act continue to prescribe the one-year time period for any alteration to a name. As the application for alteration of name in this case was made after the child had reached his first birthday, s 15 of the BDRA was of no assistance to the plaintiff.

[76] In view of the above findings, I dismiss the plaintiff's application.

[77] I make no order as to costs.

POSTSCRIPT

[78] I am mindful of the fact that, though not a party in these proceedings, it is the child that is the subject matter of the case. The best interest of the child must always be foremost in our mind.

[79] The effect of this decision is that the child will have to carry the surname and name that has been registered in the birth certificate.

[80] Following the decision in *Chris Jeremy*, MHY will still be able to alter his name to BC or BCZ. He can do so once he has been issued with an identity card. His new name will then be reflected in his identity card.

Plaintiff's application dismissed with no order as to costs.

Reported by Dzulqarnain Ab Fatar